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In the Supreme Court of the United States

OCTOBER TERM, 1967.

No. 229.

In the Matter of
JEFFREY FISCHER,
a minor.

APPEAL FROM THE COURT OF APPEALS,
EIGHTH JUDICIAL DISTRICT OF OHIO.

SUPPLEMENTAL BRIEF OF APPELLANT.

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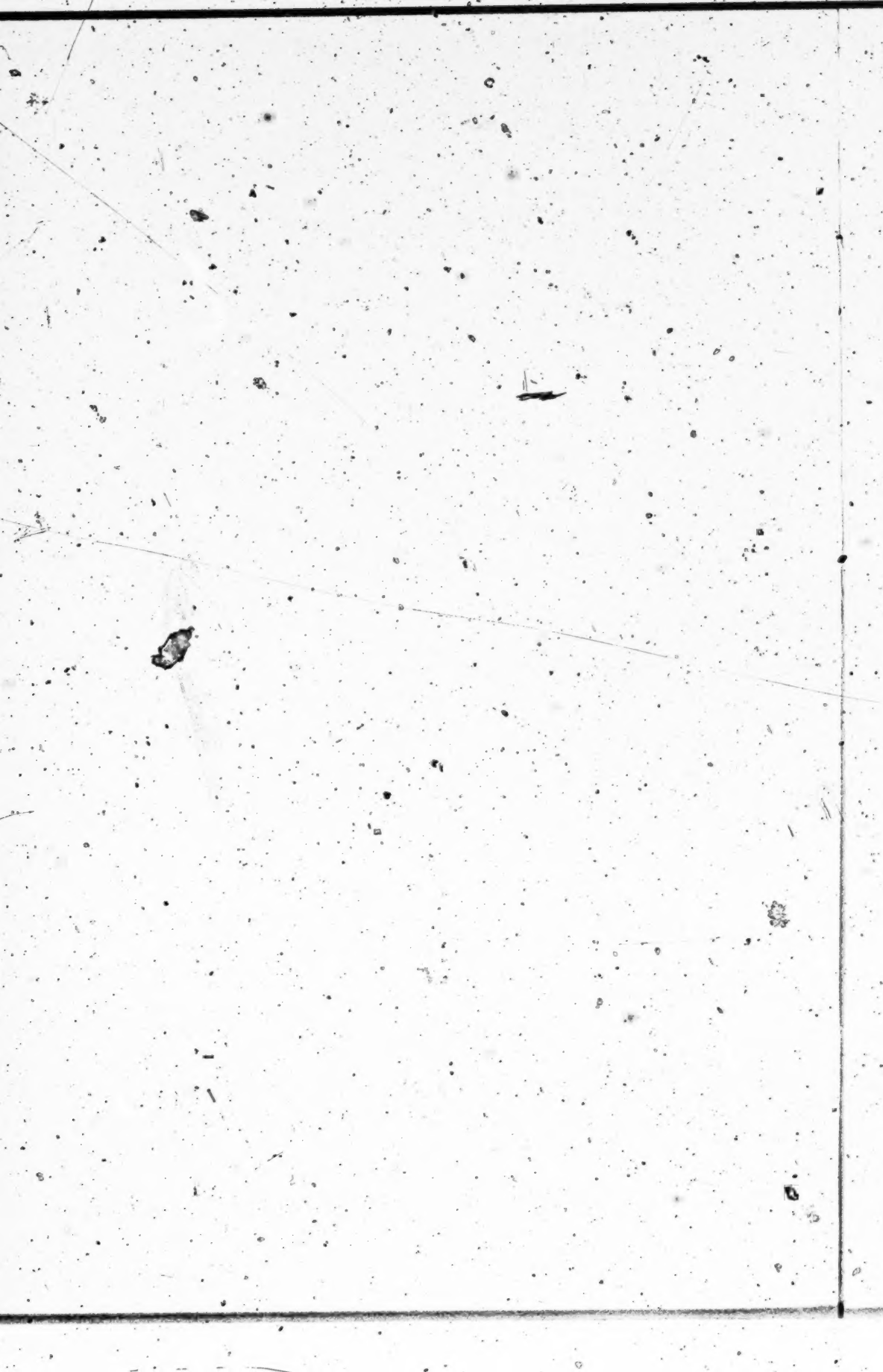

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The State, Appellee herein, does not and cannot in its Supplemental Brief deny that when Appellant Jeffrey Fischer gave his confession in the police station, neither he nor his parents were: (1) represented by counsel; (2) advised of the right to have counsel; (3) advised of the right to remain silent; (4) advised of the right of self-incrimination. Instead the State blithely asserts that "Jeffrey fully exercised his Constitutional rights," that he consented to his interrogation, and that his confession was voluntary. Such unfounded assertions assume the very issues raised by this appeal.

Appellant submits that his alleged "consent" to interrogation and that of his parents can in no sense be meaningful since neither he nor his parents were warned of their rights under Amendments V, VI, and XIV. It is clear since *Miranda v. State of Arizona*, 384 U. S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694, that waiver or consent under such circumstances will be given no effect.

Furthermore, it is nonsense to argue, as does Appellee, that Jeffrey fully exercised his Constitutional rights to remain silent merely because he would not confess at once. The State apparently claimed that a confession made after a period of interrogation is voluntary because the suspect voluntarily refrained from confessing beforehand. It is far more plausible to see the interrogation as one of mounting police pressures, rather than follow the amateur psychology indulged in by the State's unsupported claim of "pressure of guilt feelings."

This Court has made it clear in the *Escobedo, Miranda,* and many other decisions, that there are certain minimum prerequisites or criteria which must be met before a confession will be held admissible. Basic thereto is the necessity that the suspect, and/or his parents in this case, be meaningfully and effectively advised of their son's Constitutional right to counsel and to remain silent. In the instant case, this was not done. There is then no need even to reach the State's dubious speculation on voluntariness, and its incredible claim that the defendant, much less the juvenile offender, is not entitled to his Constitutional rights, if—as the State asserts, his guilt is "clear and certain."

This Court in *Application of Gault,* 87 S. Ct. 1428, at 1458, declared that the greatest care was to be taken to insure the voluntariness of a juvenile's admission. Appellant submits that the *Gault* decision should be taken to embrace the juvenile offender in the police station and the due process requirements enunciated in the *Miranda* and *Escobedo* cases. Only in this manner can the juvenile's rights under the Fifth, Sixth, and Fourteenth Amendments be fully safeguarded.

It is once more respectfully submitted that this Court should grant a summary ruling by which jurisdiction is

exercised and the case reversed, or at the very least remanded for further proceeding, not inconsistent with the *Gault* decision.

Respectfully submitted,

DAVID I. SINDELL,
Counsel for Appellant.